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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1335

Introduced by Assembly Member Maienschein

(Principal coauthor: Senator Vidak)

(Coauthors: Assembly Members Chávez, Conway, Frazier,

Beth Gaines, Gonzalez, Grove, Jones, Nestande, and Patterson)

(Coauthors: Senators Anderson, Beall, Cannella, Fuller, and Gaines)

February 22, 2013

An act to amend Sections 667.61 and 667.9 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Maienschein. Sex offenses: disabled victims.

(1) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the

commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, *if the victim is developmentally disabled, as defined*. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(2) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if certain circumstances were present, including, among other things, in the commission of that offense any person kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, *if the victim is developmentally disabled, as defined*. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(3) Existing law requires that a person who commits certain enumerated crimes, including rape, sodomy, oral copulation, and sexual penetration, against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under 14 years of age, receive a one-year sentence enhancement and requires that any person having a prior conviction for any of the enumerated offenses receive a 2-year sentence enhancement.

This bill would add to the enumerated list of crimes rape, sodomy, oral copulation, and sexual penetration, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.61 of the Penal Code is amended to
2 read:

3 667.61. (a) Except as provided in subdivision (j), (l), or (m),
4 any person who is convicted of an offense specified in subdivision
5 (c) under one or more of the circumstances specified in subdivision
6 (d) or under two or more of the circumstances specified in
7 subdivision (e) shall be punished by imprisonment in the state
8 prison for 25 years to life.

9 (b) Except as provided in subdivision (a), (j), (l), or (m), any
10 person who is convicted of an offense specified in subdivision (c)
11 under one of the circumstances specified in subdivision (e) shall
12 be punished by imprisonment in the state prison for 15 years to
13 life.

14 (c) This section shall apply to any of the following offenses:

15 (1) Rape, in violation of paragraph ~~(1), (2), or~~ (2) or (6) of
16 subdivision (a) of Section 261.

1 (2) Spousal rape, in violation of paragraph (1) or (4) of
2 subdivision (a) of Section 262.

3 (3) Rape, spousal rape, or sexual penetration, in concert, in
4 violation of Section 264.1.

5 (4) Lewd or lascivious act, in violation of subdivision (b) of
6 Section 288.

7 (5) Sexual penetration, in violation of subdivision (a) ~~or (b)~~ of
8 Section 289.

9 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
10 (c), or subdivision ~~(d) or (g)~~ (d), of Section 286.

11 (7) Oral copulation, in violation of paragraph (2) or (3) of
12 subdivision (c), or subdivision ~~(d) or (g)~~ (d), of Section 288a.

13 (8) Lewd or lascivious act, in violation of subdivision (a) of
14 Section 288.

15 (9) Continuous sexual abuse of a child in violation of Section
16 288.5.

17 (10) *Rape in violation of paragraph (1) of subdivision (a) of*
18 *Section 261, if the victim was “developmentally disabled” as*
19 *defined in subdivision (d) of Section 667.9, and this is alleged in*
20 *the accusatory pleading and either admitted by the defendant in*
21 *open court or found to be true by the trier of fact.*

22 (11) *Sexual penetration, in violation of subdivision (b) of Section*
23 *289, if the victim was “developmentally disabled” as defined in*
24 *subdivision (d) of Section 667.9, and this is alleged in the*
25 *accusatory pleading and either admitted by the defendant in open*
26 *court or found to be true by the trier of fact.*

27 (12) *Sodomy, in violation of subdivision (g) of Section 286, if*
28 *the victim was “developmentally disabled” as defined in*
29 *subdivision (d) of Section 667.9, and this is alleged in the*
30 *accusatory pleading and either admitted by the defendant in open*
31 *court or found to be true by the trier of fact.*

32 (13) *Oral copulation, in violation of subdivision (g) of Section*
33 *288a, if the victim was “developmentally disabled” as defined in*
34 *subdivision (d) of Section 667.9, and this is alleged in the*
35 *accusatory pleading and either admitted by the defendant in open*
36 *court or found to be true by the trier of fact.*

37 (d) The following circumstances shall apply to the offenses
38 specified in subdivision (c):

39 (1) The defendant has been previously convicted of an offense
40 specified in subdivision (c), including an offense committed in

1 another jurisdiction that includes all of the elements of an offense
2 specified in subdivision (c).

3 (2) The defendant kidnapped the victim of the present offense
4 and the movement of the victim substantially increased the risk of
5 harm to the victim over and above that level of risk necessarily
6 inherent in the underlying offense in subdivision (c).

7 (3) The defendant inflicted aggravated mayhem or torture on
8 the victim or another person in the commission of the present
9 offense in violation of Section 205 or 206.

10 (4) The defendant committed the present offense during the
11 commission of a burglary of the first degree, as defined in
12 subdivision (a) of Section 460, with intent to commit an offense
13 specified in subdivision (c).

14 (5) The defendant committed the present offense in violation
15 of Section 264.1, subdivision (d) of Section 286, or subdivision
16 (d) of Section 288a, and, in the commission of that offense, any
17 person committed any act described in paragraph (2), (3), or (4)
18 of this subdivision.

19 (6) The defendant personally inflicted great bodily injury on
20 the victim or another person in the commission of the present
21 offense in violation of Section 12022.53, 12022.7, or 12022.8.

22 (7) The defendant personally inflicted bodily harm on the victim
23 who was under 14 years of age.

24 (e) The following circumstances shall apply to the offenses
25 specified in subdivision (c):

26 (1) Except as provided in paragraph (2) of subdivision (d), the
27 defendant kidnapped the victim of the present offense in violation
28 of Section 207, 209, or 209.5.

29 (2) Except as provided in paragraph (4) of subdivision (d), the
30 defendant committed the present offense during the commission
31 of a burglary in violation of Section 459.

32 (3) The defendant personally used a dangerous or deadly weapon
33 or a firearm in the commission of the present offense in violation
34 of Section 12022, 12022.3, 12022.5, or 12022.53.

35 (4) The defendant has been convicted in the present case or
36 cases of committing an offense specified in subdivision (c) against
37 more than one victim.

38 (5) The defendant engaged in the tying or binding of the victim
39 or another person in the commission of the present offense.

1 (6) The defendant administered a controlled substance to the
2 victim in the commission of the present offense in violation of
3 Section 12022.75.

4 (7) The defendant committed the present offense in violation
5 of Section 264.1, subdivision (d) of Section 286, or subdivision
6 (d) of Section 288a, and, in the commission of that offense, any
7 person committed any act described in paragraph (1), (2), (3), (5),
8 or (6) of this subdivision or paragraph (6) of subdivision (d).

9 (f) If only the minimum number of circumstances specified in
10 subdivision (d) or (e) that are required for the punishment provided
11 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
12 proved, that circumstance or those circumstances shall be used as
13 the basis for imposing the term provided in subdivision (a), (b),
14 (j), (l), or (m) whichever is greater, rather than being used to impose
15 the punishment authorized under any other provision of law, unless
16 another provision of law provides for a greater penalty or the
17 punishment under another provision of law can be imposed in
18 addition to the punishment provided by this section. However, if
19 any additional circumstance or circumstances specified in
20 subdivision (d) or (e) have been pled and proved, the minimum
21 number of circumstances shall be used as the basis for imposing
22 the term provided in subdivision (a), (j), or (l) and any other
23 additional circumstance or circumstances shall be used to impose
24 any punishment or enhancement authorized under any other
25 provision of law.

26 (g) Notwithstanding Section 1385 or any other provision of law,
27 the court shall not strike any allegation, admission, or finding of
28 any of the circumstances specified in subdivision (d) or (e) for any
29 person who is subject to punishment under this section.

30 (h) Notwithstanding any other provision of law, probation shall
31 not be granted to, nor shall the execution or imposition of sentence
32 be suspended for, any person who is subject to punishment under
33 this section.

34 (i) For any offense specified in paragraphs (1) to (7), inclusive,
35 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
36 subdivision (n), the court shall impose a consecutive sentence for
37 each offense that results in a conviction under this section if the
38 crimes involve separate victims or involve the same victim on
39 separate occasions as defined in subdivision (d) of Section 667.6.

(j) (1) Any person who is convicted of an offense specified in subdivision (c), with the exception of a violation of subdivision (a) of Section 288, upon a victim who is a child under 14 years of age under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), shall be punished by imprisonment in the state prison for life without the possibility of parole. Where the person was under 18 years of age at the time of the offense, the person shall be punished by imprisonment in the state prison for 25 years to life.

(2) Any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e), upon a victim who is a child under 14 years of age, shall be punished by imprisonment in the state prison for 25 years to life.

(k) As used in this section, “bodily harm” means any substantial physical injury resulting from the use of force that is more than the force necessary to commit an offense specified in subdivision (c).

(l) Any person who is convicted of an offense specified in subdivision (n) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), upon a victim who is a minor 14 years of age or older shall be punished by imprisonment in the state prison for life without the possibility of parole. If the person who was convicted was under 18 years of age at the time of the offense, he or she shall be punished by imprisonment in the state prison for 25 years to life.

(m) Any person who is convicted of an offense specified in subdivision (n) under one of the circumstances specified in subdivision (e) against a minor 14 years of age or older shall be punished by imprisonment in the state prison for 25 years to life.

(n) Subdivisions (l) and (m) shall apply to any of the following offenses:

(1) Rape, in violation of paragraph ~~(1)~~ or (2) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sexual penetration, in violation of paragraph (1) of subdivision (a) ~~or subdivision (b)~~ of Section 289.

(5) Sodomy, in violation of paragraph (2) of subdivision (c) of Section 286, or in violation of subdivision (d) ~~or (g)~~ of Section 286.

(6) Oral copulation, in violation of paragraph (2) of subdivision (c) of Section 288a, or in violation of subdivision (d) ~~or (g)~~ of Section 288a.

(7) Rape in violation of paragraph (1) of subdivision (a) of Section 261, if the victim was “developmentally disabled” as defined in subdivision (d) of Section 667.9, and this is alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(8) Sexual penetration, in violation of subdivision (b) of Section 289, if the victim was “developmentally disabled” as defined in subdivision (d) of Section 667.9, and this is alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(9) Sodomy, in violation of subdivision (g) of Section 286, if the victim was “developmentally disabled” as defined in subdivision (d) of Section 667.9, and this is alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(10) Oral copulation, in violation of subdivision (g) of Section 288a, if the victim was “developmentally disabled” as defined in subdivision (d) of Section 667.9, and this is alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(o) The penalties provided in this section shall apply only if the existence of any circumstance specified in subdivision (d) or (e) is alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 2. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes specified in subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known

1 to the person committing the crime, shall receive a one-year
2 enhancement for each violation.

3 (b) Any person who commits a violation of subdivision (a) and
4 who has a prior conviction for any of the offenses specified in
5 subdivision (c), shall receive a two-year enhancement for each
6 violation in addition to the sentence provided under Section 667.

7 (c) Subdivisions (a) and (b) apply to the following crimes:

8 (1) Mayhem, in violation of Section 203 or 205.

9 (2) Kidnapping, in violation of Section 207, 209, or 209.5.

10 (3) Robbery, in violation of Section 211.

11 (4) Carjacking, in violation of Section 215.

12 (5) Rape, in violation of paragraph (1), (2), or (6) of subdivision
13 (a) of Section 261.

14 (6) Spousal rape, in violation of paragraph (1) or (4) of
15 subdivision (a) of Section 262.

16 (7) Rape, spousal rape, or sexual penetration in concert, in
17 violation of Section 264.1.

18 (8) Sodomy, in violation of paragraph (2) or (3) of subdivision
19 (c), or subdivision (d) or (g), of Section 286.

20 (9) Oral copulation, in violation of paragraph (2) or (3) of
21 subdivision (c), or subdivision (d) or (g), of Section 288a.

22 (10) Sexual penetration, in violation of subdivision (a) or (b)
23 of Section 289.

24 (11) Burglary of the first degree, as defined in Section 460, in
25 violation of Section 459.

26 (d) As used in this section, “developmentally disabled” means
27 a severe, chronic disability of a person, which is all of the
28 following:

29 (1) Attributable to a mental or physical impairment or a
30 combination of mental and physical impairments.

31 (2) Likely to continue indefinitely.

32 (3) Results in substantial functional limitation in three or more
33 of the following areas of life activity:

34 (A) Self-care.

35 (B) Receptive and expressive language.

36 (C) Learning.

37 (D) Mobility.

38 (E) Self-direction.

39 (F) Capacity for independent living.

40 (G) Economic self-sufficiency.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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